
PURPOSE

To implement Prison Rape Elimination Act (PREA) National Standards for juvenile facilities to prevent incidents of sexual abuse and sexual harassment in state operated and private, contracted juvenile justice residential treatment facilities, to the maximum extent practical. To take prompt, effective and compassionate action in the event that allegations of sexual abuse or harassment are made.

DEFINITIONS***Age of Consent***

While no Michigan statute specifically establishes an age at which a minor may legally consent to sexual activity, there can be criminal penalties for sexual activity with a minor under 16 years of age. MCL 750.520b. There also can be criminal penalties for sexual activity with a minor under 18 years old when certain circumstances exist. MCL 750.520d.

First Responder

First responder includes any/all agency staff to whom an incident or report of alleged sexual abuse or any other form of abuse/neglect of youth is reported. This includes staff's own observation or suspicion, direct report (verbal or written) from youth or third parties of abuse or neglect in accordance with mandated reporting laws and agency policies.

Security Staff

Employees primarily responsible for the supervision and control of youth in housing units, recreational areas, dining areas and other program areas of the facility. 28 CFR 115.5.

Sexual Abuse

Sexual abuse of a youth by another youth and sexual abuse of a youth by a staff member, contractor or volunteer. 28 CFR 115.6(1)-(2).

Youth-on-Youth Sexual Abuse

Sexual abuse of a youth by another youth includes any of the following acts, if the youth does not consent, is coerced into such

act by overt or implied threats of violence, or is unable to consent or refuse:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight.
- Contact between the mouth and the penis, vulva or anus.
- Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument.
- Contact between the mouth and any body part where the youth has the intent to abuse, arouse or gratify sexual desire.
- Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Staff-on-Youth Sexual Abuse

Sexual abuse of a youth by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the youth:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight.
- Contact between the mouth and the penis, vulva, or anus.
- Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.
- Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.
- Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.

- Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described above.
- Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of a youth.
- Voyeurism by a staff member, contractor, or volunteer.

Sexual Harassment

Pursuant to Prison Rape Elimination Act, National Standards for Juvenile Facilities, 28 CFR 115.6, sexual harassment includes:

- Repeated and unwelcomed sexual advances, requests for sexual favors, or verbal comments, gestures or actions of derogatory or offensive sexual nature by one youth toward another youth.
- Repeated verbal comments or gestures of a sexual nature to a youth by a staff member, contractor or volunteer including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Voyeurism by a Staff Member, Contractor or Volunteer

An invasion of privacy of a youth by staff for reasons unrelated to official duties, such as peering at a youth who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a youth's naked body or of a youth performing bodily functions. 28 CFR 115.6.

See [JRG, JJ Residential Glossary](#).

**RESPONSIBLE
STAFF**

PREA compliance managers must provide leadership within the facility to all facility employees, contractors and volunteers for ensuring this policy is implemented fully.

**PREVENTION
PLANNING**

The Michigan Department of Health and Human Services (MDHHS) has zero tolerance for sexual abuse or harassment and employs a PREA juvenile coordinator with sufficient time and authority to develop, implement, and oversee MDHHS efforts to comply with the PREA standards in all state operated and private, contracted juvenile justice residential treatment facilities. 28 CFR 115.311(a)-(b).

Each facility is required to have zero tolerance for sexual abuse and harassment of youth. Each private, contracted agency must employ an upper-level agency wide, PREA coordinator and each facility must employ a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards. 28 CFR 115.311(b) and (c). PREA compliance managers must ensure that preventive plans are in place and should allegations regarding sexual abuse or harassment be made, that staff are appropriately trained to take actions to rapidly restore safety, attend to and support the victim and promptly begin the investigative process.

Pursuant to Prison Rape Elimination Act, Juvenile Facility National Standards, 28 CFR 115.311-115.318, prevention planning procedures at the facility must address the following:

- Actions that seek to prevent sexual abuse and harassment.
- Supervision practices including determination and review of adequate staffing practices as well as assessment and use of monitoring technology. See [JRM 540, Youth to Staff Ratio](#) for required staffing plan reviews.
- Limits to cross-gender viewing including during routine youth searches, admission/medical examinations and any monitoring technology. See [JRM 511, Body Searches of Youth](#) for requirements on cross-gender searches.
- Methods and practices to accommodate youth with special needs. See policies [SRM 400, Reasonable Accommodations](#), [SRM 401 Effective Communication For Persons Who Are Deaf, Deafblind, or Hard of Hearing](#) and [SRM 402, Limited English Proficiency and Bilingual Interpreter Services](#) for detailed requirements.

- Hiring and promotion decisions and screening procedures for staff, contractors, sub-contractors, volunteers and interns. See [JRM 100, Screening and Ongoing Checks for Staff](#) for specific details.

RESPONSIVE PLANNING

Pursuant to Prison Rape Elimination Act, Juvenile Facility National Standards, 28 CFR 115.321-115.322, responsive planning must include the following:

- Development of a facility specific, uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
- Using a developmentally appropriate protocol for youth. This protocol shall be based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women Publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents". See the [National PREA Resource Center](#) to access this publication.
- Ensuring all youth who experience sexual abuse have access to forensic medical examinations, whether on-site or at an outside facility, without financial cost. Such examinations shall be performed by sexual assault forensic examiners (SAFEs) or sexual assault nurse examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. Efforts to locate SAFEs or SANEs providers must be documented.
- Planning to make a victim advocate from a rape crisis center available or other qualified staff member for the victim. Other qualified staff member is defined as an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general. Efforts to obtain a Memorandum of Understanding (MOU) for victim advocacy services, from a rape crisis center as defined by 42 USC 14043g(b)(2)(C), must be documented.
- Having a policy in place to ensure that allegations of sexual abuse or sexual harassment that may be criminal are referred

for investigation to law enforcement. The facility must publish such policy on its website or if it does not have a website, make the policy available through other means.

- Develop and maintain agreements with law enforcement that conduct investigations into allegations that are criminal in nature. Document the MOU or attempts to obtain an MOU.

Refer to [JRM 173, Investigation Protocol](#) for the components necessary to meet PREA standards.

TRAINING AND EDUCATION

Pursuant to Prison Rape Elimination Act, Juvenile Facility National Standards, 28 CFR 115.331-115.335, training and education procedures at the facility must address what constitutes sexual abuse, harassment or other sexual incidents that are violations of facility rules. Initial and ongoing training and education needs to include the following groups:

- Youth. See [JRM 200, Juvenile Justice Assignment Unit and Admissions](#) for policy on youth PREA orientation requirements.
- Staff, volunteers & contractors. See [JRM 170, Staff Development and Training](#) for requirements on training and education related to PREA.

ASSESSMENT AND PLACEMENT

Pursuant to the Prison Rape Elimination Act, Juvenile Facility National Standards, 28 CFR 115.341-115.342, assessment and placement procedures must:

- Use record reviews, assessments, and interviews of each admitted youth by trained and qualified staff to make appropriate housing, sleeping arrangements, education and work assignments as applicable for all youth.
- Seek to gather information about prior sexual abuse or harassment as a victim or perpetrator as part of admission and during the early stages of the treatment program.
- Seek to prevent further victimization of previous victims or re-offending by a previous perpetrator.

See [JRM 202, Residential Screening and Assessments](#) for detailed information on assessment and placement procedures.

See [JRM 630, Isolation And/or Confinement](#) for restrictions on placing lesbian, gay, bi-sexual, transgender or intersex youth in seclusion.

MAKING A PREA ALLEGATION

See [JRM 213, Grievance Policy](#) for the multiple ways youth and staff need to have available to make a PREA allegation.

RESPONSE TO A PREA ALLEGATION

Pursuant to the Prison Rape Elimination Act, Juvenile Facility National Standards, 28 CFR 115.361-115.368, procedures following a report of sexual abuse or harassment must require all staff to immediately report any knowledge, suspicion or information they receive regarding:

- An incident of sexual abuse or harassment that occurred in an institutional setting.
- Retaliation against youth or staff who reported sexual abuse or harassment.
- Any staff neglect or violation of any responsibilities that may have contributed to an incident of sexual abuse, harassment or retaliation.

See [JRM 530, Incident Reports](#) for more information on PREA related incidents.

Procedures must:

- Include provisions for initiating and completing an investigation.
- Include actions for staff to ensure that the alleged victim and alleged perpetrator are separated and any crime scene is sealed and preserved.
- Ensure coordination of actions taken in response to the incident among first responders, medical and mental health practitioners, investigators, law enforcement, licensing, children protective services and facility leadership.

- Address the protection of all youth and staff who make a report or who cooperate with sexual abuse or harassment investigations from retaliation by other youth or staff. This includes using the MDHHS-5799-PREA, Retaliation Log, to monitor and protect youth or staff for at least 90 days following the report or cooperation.

See [JRM 173, Investigation Protocol](#) for details on implementing the investigation procedures.

Investigations

Each incident of alleged or reported sexual abuse or sexual assault must be fully investigated. See [JRM 173, Investigation Protocol](#) for more information on PREA related investigations.

Disciplinary Sanctions

Pursuant to the Prison Rape Elimination Act, Juvenile Facility National Standards, 28 CFR 115.376-115.378, procedures for disciplinary sanctions must address both staff and youth as follows:

Disciplinary Sanctions for Staff

Staff shall be subject to discipline up to and including termination for violating sexual abuse or sexual harassment policies (28 CFR 115.376). Termination shall be the discipline for staff who have engaged in sexual abuse. Discipline for violations of PREA policies relating to sexual abuse or sexual harassment shall be based on the nature and circumstances of the acts committed, discipline history and discipline imposed for comparable offenses by other staff with similar histories. All related terminations or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement and to the Division of Child Welfare Licensing (DCWL).

Disciplinary Sanctions for Contractors and Volunteers

Any contractor or volunteer who engages in sexual abuse cannot have contact with youth and must be reported to law enforcement and DCWL (28 CFR 115.377). The facility director or designee shall determine whether to prohibit further contact with youth in the case of any violation of PREA sexual harassment policies.

Disciplinary Sanctions for Youth

Following any finding that a youth engaged in youth-on-youth sexual abuse, formal due process must be provided for youth discipline. 28 CFR 115.378.

Sanctions for youth must correspond with the nature and circumstances of the abuse committed, the youth's disciplinary history, and the sanctions imposed for comparable offenses by other youth with similar histories.

The disciplinary process must consider whether a youth has mental disabilities or mental illness that contributed to the behavior when determining what type of sanction, if any, should be imposed.

If the facility offers therapy, counseling, or other interventions designed to address underlying reasons or motivations for the abuse, the facility must consider whether to require the offending youth to participate in such interventions as a condition of access to programming or other benefits.

Facility staff may discipline a youth for sexual contact with staff only upon finding that the staff member did not consent to such contact.

A youth must not be disciplined for making a report of sexual abuse if the youth made the report in good faith. Sexual activity between youth that does not involve coercion is considered a facility rule violation.

See [JRM 602, Discipline Response System](#) for more information on disciplinary sanctions for youth.

**Emergency and
Ongoing Medical
and Mental Health
Services**

Pursuant to the Prison Rape Elimination Act, Juvenile Facility National Standards, 28 CFR 115.381-115.383, facility procedures for medical and mental health care must address the following:

- Asking the youth about prior sexual victimization and prior sexual perpetration during the admission process. See [JRM 200, Juvenile Justice Assignment Unit and Admissions](#) for more information on the admission process.

- Providing timely, unimpeded access to free emergency medical treatment and crisis intervention services. See [JRM 173, Investigation Protocol](#) on required services.
- Provisions for ongoing medical and mental health evaluation and treatment for all youth who, during their stay, have been victimized by sexual abuse or harassment.
- A mental health evaluation of youth known to have committed an act of sexual abuse within 60 days of learning of such abuse history and provision of treatment when deemed appropriate by qualified mental health practitioners. See [JRM 200, Juvenile Justice Assignment Unit and Admissions](#) for details on completing a mental health evaluation.
- Pregnancy tests for youth who are victims of sexually abusive vaginal penetration.
- Whenever necessary or requested, such victims must receive timely information about and access to all pregnancy-related medical services that are lawful in the community. See [JRM 370, Family Planning Services](#) for more information on youth pregnancy while in placement.

DATA COLLECTION AND REVIEW

Pursuant to the Prison Rape Elimination Act Juvenile Facility National Standards, 28 CFR 115.386-115.389, data collection and review procedures must include:

- A sexual abuse or harassment incident review at the conclusion of every sexual abuse or harassment investigation, using the MDHHS-5818-PREA, 30-Day Incident Review. See [JRM, 530 Incident Reports](#) for incident review requirements.
- The facility director or designee shall collect accurate, uniform data annually, and at a minimum shall include the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence by the Department of Justice, for every allegation of sexual abuse.
- The facility director or designee must review the data collected in order to assess and improve the effectiveness of its sexual abuse prevention, detection and response policies, practices and training, including:

- Identifying problem areas.
- Taking corrective action on an ongoing basis.
- Preparing an annual report of its findings from its data review and any corrective actions. The annual report must not include any youth identifying information and must include:
 - Comparison of the current years data and corrective action from prior years.
 - Assessment of the facility's progress in addressing the sexual abuse.
 - Availability to the public through its website.

Provisions for secure maintenance and storage of sexual abuse and harassment incident data for at least 10 years after the date of its initial collection.

AUDITS

Pursuant to Prison Rape Elimination Act, National Standards for Juvenile Facilities, 28 CFR 115.401-115.405, facilities must be prepared for and cooperate with audits at least every three years.

The facility director or designee and PREA compliance manager shall:

- Bear the burden of demonstrating compliance with the PREA standards,
- Submit documents to the PREA juvenile coordinator and auditor,
- Provide access to the auditor to all areas of the facility,
- Send copies of any relevant documents to the auditor, and
- Ensure youth, staff, supervisors and administrators are available for private interview.

If a facility requires a corrective action plan, the facility director or designee and the PREA compliance manager is required to jointly develop a corrective action plan to achieve compliance.

If the correction period is over and the facility has not achieved full compliance, the facility director or designee may request a subsequent audit to the MDHHS PREA juvenile coordinator once they believe the facility is in full compliance.

LEGAL BASE

Federal

Prison Rape Elimination Act, 42 USC 15601 et seq.

Establishes a national zero-tolerance standard for the incidence of prison rape in the United States and provides national implementation standards to improve management and administration of such facilities and increases accountability of staff who fail to detect, prevent, reduce and punish prison rape.

Prison Rape Elimination Act, National Standards for Juvenile Facilities, 28 CFR 115.311 et seq.

Provides standards for juvenile facilities on prevention planning, responsive planning, training and education, screening for risk of sexual victimization and abusiveness, reporting, official response following a resident report, investigations, discipline, medical and mental care, data collection and review and audits.

State

The Child Protection Law, Act 238 of 1975, MCL 722.622(z).

Provides the definition for sexual abuse.

The Michigan Penal Code, Act 328 of 1931, MCL 750.520a(q)-(r).

Provides the definition for sexual contact and sexual penetration.

POLICY CONTACT

Facility supervisors or managers may submit policy clarification questions to: Juvenile-Justice-Policy@michigan.gov.